

**AMERICAN STANDARD INSURANCE COMPANY
OF WISCONSIN**

**6000 American Parkway
Madison, Wisconsin 53783-0001**

NAIC COMPANY CODE 19283

**LIMITED MARKET CONDUCT EXAMINATION REPORT
As of June 30, 2004**

**PREPARED BY INDEPENDENT CONTRACTORS FOR THE
COLORADO DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF INSURANCE**

AMERICAN STANDARD INSURANCE COMPANY OF WISCONSIN
6000 American Parkway
Madison, Wisconsin 53783-0001

LIMITED MARKET CONDUCT
EXAMINATION REPORT
As of
June 30, 2004

Prepared by
Kathleen M. Bergan, CIE
Kenneth C. Lang, AIE
Independent Contract Examiners

November 17, 2006

David F. Rivera
Commissioner of Insurance
State of Colorado
1560 Broadway Suite 850
Denver, Colorado 80202

Commissioner Rivera:

In accordance with §§ 10-1-203 and 10-3-1106, C.R.S., a limited market conduct examination of the private passenger automobile insurance business of American Standard Insurance Company of Wisconsin has been conducted.

The Company's underwriting and rating records were examined at its Missouri regional office located at 4802 Mitchell Avenue, St. Joseph, Missouri 64507-2500. The Company's claims records were examined at its Colorado regional office, located at 9510 Meridian Boulevard, Englewood, Colorado 80112

The examination covered the period from July 1, 2003 to June 30, 2004.

A report of the limited market conduct examination of American Standard Insurance Company of Wisconsin is, herewith, respectfully submitted.

Kathleen M. Bergan, CIE

Kenneth C. Lang, AIE

Independent Market Conduct Examiners

**LIMITED MARKET CONDUCT
EXAMINATION REPORT
OF
AMERICAN STANDARD INSURANCE COMPANY OF WISCONSIN**

TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
I. SALUTATION.....	3
II. TABLE OF CONTENTS	4
III. COMPANY PROFILE.....	4
IV. PURPOSE AND SCOPE OF EXAMINATION.....	5
V. EXAMINERS' METHODOLOGY.....	7
VI. EXAMINATION REPORT SUMMARY.....	10
VII. PERTINENT FACTUAL FINDINGS.....	12
A. PRIVATE PASSENGER AUTO	
1. Underwriting and Rating.....	13
2. Claims Practices.....	19
VIII. SUMMARY OF ISSUES AND RECOMMENDATIONS.....	24
IX. EXAMINATION REPORT SUBMISSION.....	25

COMPANY PROFILE

American Standard Insurance Company (hereinafter referred to as “the Company”) was incorporated on April 5, 1961, under the laws of the State of Wisconsin, and began business on September 28, 1961. The words “of Wisconsin” were added to the name on June 8, 1962.

Outstanding capital stock was held by the sponsor, American Family Mutual Insurance Company and its affiliate American Family Life Insurance Company until March 28, 1968, at which time complete ownership passed to the American Family Mutual Insurance Company. On October 1, 1981, the American Family Mutual Insurance Company transferred direct stock control to a newly formed intermediate holding company, AmFam, Inc. Since October 1, 1982, all business of the Company has been 100% reinsured by the ultimate parent, American Family Mutual Insurance Company.

The Company is one of nine (9) companies which currently comprise the American Family Insurance Group.

The Company presently offers private passenger automobile insurance to individuals located in Colorado, Arizona, Idaho, Illinois, Indiana, Iowa, Kansas, Minnesota, Missouri, Nebraska, Nevada, North Dakota, Ohio, Oregon, South Dakota, Utah and Wisconsin.

The Company bases its Colorado sales and services on a network of exclusive agents and company employees located in communities throughout the state. The Company’s regional claims office for Colorado is located at 9510 Meridian Boulevard, Englewood, Colorado 80112. The Company has been licensed to sell automobile insurance in Colorado since 1966.

*The Company's direct written premium for private passenger automobile insurance for the State of Colorado for the calendar year ending December 31, 2004 was \$73,218,000, representing a market share of 2.60%.

* Data as reported in the 2004 Colorado Insurance Industry Statistical Report.

PURPOSE AND SCOPE OF EXAMINATION

This market conduct examination report was prepared by independent examiners contracting with the Colorado Division of Insurance (Division) for the purpose of auditing certain business practices of insurers licensed to conduct the business of insurance in the State of Colorado. This procedure is in accordance with Colorado insurance law, §10-1-204(6), C.R.S., which empowers the Commissioner to supplement the Division's resources to conduct market conduct examinations. The findings in this report, including all work products developed in the production of this report, are the sole property of the Division.

The purpose of the examination was to determine the Company's compliance with Colorado insurance laws related to private passenger automobile insurance. Examination information contained in this report should serve only these purposes. The conclusions and findings of this examination are public record.

This examination was governed by, and performed in accordance with, procedures developed by the National Association of Insurance Commissioners and the Division. In reviewing material for this report the examiners relied primarily on records and material maintained and/or submitted by the Company. The examination covered a twelve (12) month period of the Company's operations, from July 1, 2003 to June 30, 2004.

File sampling was based on a review of underwriting and claims files that were systematically selected using ACL™ software and computer data files provided by the company. Sample sizes were chosen based on procedures developed by the National Association of Insurance Commissioners. Upon review of each file, any concerns or discrepancies were noted on comment forms and delivered to the Company for review. Once the Company was advised of a finding contained in a comment form, the Company had the opportunity to respond. For each finding the Company was requested to agree, disagree or otherwise justify the Company's noted action. The examination report is a report by exception. Therefore, much of the material reviewed is not addressed in this written report. Reference to any practices, procedures, or files, which manifested no improprieties, was omitted.

An error tolerance level of plus or minus ten dollars (\$10.00) was allowed in most cases where monetary values were involved. However, in cases where monetary values were generated by computer or other systemic methodology, a zero dollar (\$0) tolerance level was applied in order to identify possible system errors. Additionally, a zero dollar (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines.

When sampling was involved, a minimum error tolerance level of five percent (5%) was established to determine reportable exceptions. However, if an issue appeared to be systemic, or when due to the sampling process it was not feasible to establish an exception percentage, a minimum error tolerance percentage was not utilized. Also, if more than one sample was reviewed in a particular area of the examination (e.g., timeliness of claims payment), and if one or more of the samples yielded an exception rate of five percent (5%) or more, the results of any other samples with exception percentages less than five percent (5%) were also included.

The report addresses private passenger automobile insurance business and contains information regarding exceptions to Colorado insurance laws. The examination was limited to review of the following:

1. Company Operations and Management
2. Complaints
3. Underwriting and Rating
4. Claims Practices

Certain unacceptable or non-complying practices may not have been discovered in the course of this examination. Additionally, findings may not be material to all areas that would serve to assist the Commissioner. Failure to identify or criticize specific Company practices does not constitute acceptance by the Division. Examination findings may result in administrative action by the Division.

EXAMINERS' METHODOLOGY

The examiners reviewed the Company's private passenger automobile Company operations and management, complaint handling, underwriting and rating, and claims practices to determine compliance with Colorado insurance laws as outlined in Exhibit 1.

Exhibit 1

Law	Subject
Section 10-1-128, C.R.S.	Fraudulent insurance acts – immunity for furnishing information relating to suspected fraud – legislative declaration.
Section 10-3-1104, C.R.S.	Unfair methods of competition and unfair or deceptive acts or practices.
Section 10-4-404.5, C.R.S.	Rating plans – property and casualty type II insurers – rules.
Section 10-4-413, C.R.S.	Records required to be maintained.
Section 10-4-602, C.R.S.	Basis for cancellation.
Section 10-4-603, C.R.S.	Notice.
Section 10-4-604, C.R.S.	Nonrenewal.
Section 10-4-605, C.R.S.	Proof of notice.
Section 10-4-609, C.R.S.	Insurance protection against uninsured motorists-applicability.
Section 10-4-610, C.R.S.	Property damage protection against uninsured motorists.
Section 10-4-611, C.R.S.	Elimination of discounts – damage by uninsured motorist.
Section 10-4-613, C.R.S.	Glass repair and replacement.
Section 10-4-614, C.R.S.	Inflatable restraint systems - replacement - verification of claims.
Section 10-4-618, C.R.S.	Unfair or Discriminatory trade practices – legislative declaration.
Section 10-4-626, C.R.S.	Prohibited reasons for nonrenewal or refusal to write a policy of automobile insurance applicable to this part 6.
Section 10-4-627, C.R.S.	Discriminatory standards – premiums – surcharges – proof of financial responsibility requirements.
Section 10-4-628, C.R.S.	Refusal to write – changes in – cancellation – nonrenewal of policies prohibited.
Section 10-4-629, C.R.S.	Cancellation – renewal – reclassification.
Section 10-4-630, C.R.S.	Exclusion of named driver.
Section 10-4-632, C.R.S.	Reduction in rates for drivers aged fifty-five years or older who complete a driver's education course – legislative declaration.
Section 10-4-633, C.R.S.	Certification of policy and notice forms.
Section 10-4-634, C.R.S.	Assignment of payment for covered benefits.
Section 10-4-642, C.R.S.	Prompt payment of direct benefits – legislative declaration – Definitions.
Section 10-4-706, C.R.S.	Required coverages-complying policies- PIP examination program.
Section 10-4-706.5, C.R.S.	Operator's policy of insurance.
Section 10-4-707, C.R.S.	Benefits-how payable.
Section 10-4-708, C.R.S.	Prompt payment of direct benefits.
Section 10-4-713, C.R.S.	No tort recovery for direct benefits.
Insurance Regulation 1-1-6	Concerning the Elements of Certification for Accident and Health Forms, Private Passenger Automobile Forms, Commercial Automobile with Individually-owned Private Passenger Automobile-Type Endorsement Forms, Claims-Made Liability Forms and Preneed Funeral Contracts

Insurance Regulation 1-1-7	Market Conduct Record Retention
Insurance Regulation 1-1-8	Penalties And Timelines Concerning Division Inquiries And Document Requests
Insurance Regulation 5-1-2	Application and Binder Forms
Insurance Regulation 5-1-10	Rate and Rule Filing Submissions Property And Casualty Insurance
Insurance Regulation 5-2-1	Relative Value Schedule for No Fault
Insurance Regulation 5-2-2	Renewal of Automobile Insurance Policies – Excluded Named Drivers
Insurance Regulation 5-2-3	Concerning Automobile Insurance Policies Issued or Renewed Prior to July 1, 2003
Insurance Regulation 5-2-6	Automobile No Fault Cost Containment Options
Insurance Regulation 5-2-8	Timely Payment of Personal Protection Benefits
Insurance Regulation 5-2-9	Personal Injury Protection Examination Program
Insurance Regulation 5-2-11	Transition from No-Fault Auto to Tort System
Insurance Regulation 5-2-12	Automobile Insurance Consumer Protections
Insurance Regulation 5-2-15	Concerning Consumer Protection for Vehicle Valuation and Rental Reimbursements
Insurance Regulation 6-1-1	Limiting coverage
Insurance Regulation 6-2-1	Complaint Record Maintenance

Company Operations and Management

The examiners reviewed Company management, quality controls, record retention, installment payment plans, anti-fraud plan, forms certification, and timely cooperation with the examination process.

Complaints

The examiners compared the Division's complaint log against the Company's log to determine if the logs were consistent and to review complaint activity and trends. A sample of complaints was reviewed and all complaints appeared to have been handled in a timely manner.

Underwriting

For the period under examination, systematically selected samples of underwriting files were taken as follows:

Review Lists	Population	Sample Size	Percentage to Population
Cancellations (excluding non-payment of premium)	556	50	9%
Nonrenewals	380	50	13%
Surcharges	2,071	50	2%
Tort Conversion	34,140	100	<1%

Rating

The examiners reviewed the rate and rule filings, statistical justifications, and methodology submitted to the Division for the period under examination. This information was compared against a sample of in-force policies, rated by coverage selection, to determine compliance with filed base rates, territory codes, symbols, class plans, discounts, tier-rating factors, and final premium calculations. A sample of agents submitting new business was verified against the producer database for licensing compliance.

Claims Practices

For the period under examination, the examiners systematically selected the following samples to determine compliance with claims handling practices and manual rules:

Review Lists	Population	Sample Size	Percentage to Population
Auto Claims Paid	4756	50	1%
Auto Claims Paid - PIP	254	50	20%
Auto Claims – Closed Without Payment	2584	50	2%
Auto Medical Claims Paid	74	50	68%

EXAMINATION REPORT SUMMARY

The examination resulted in five (5) issues arising from the Company's apparent failure to comply with Colorado insurance laws that govern all property and casualty insurers operating in Colorado.

Company Operations and Management:

In the area of company operations and management, no compliance issues are addressed in this report.

Complaints:

In the area of complaints, no compliance issues are addressed in this report.

Underwriting and Rating:

In the area of underwriting and rating, three (3) compliance issues are addressed in this report. The issues in this phase were identified as follows:

- **Failure of the Company's surcharge rating rules to comply with Colorado insurance laws.**
- **Failure, in some cases, to provide insureds with a notice of premium increase.**
- **Failure, in some cases, to offer a named driver exclusion when nonrenewing a private passenger automobile policy.**

Claims Practices:

In the area of claim practices, two (2) compliance issues are addressed in this report. The issues in this phase were identified as follows:

- **Failure, in some cases, to comply with Colorado insurance law regarding the subrogation of PIP claims.**
- **Failure, in some cases, to pay PIP claims within the required time period.**

A copy of the Company's response, if applicable, can be obtained by contacting the Company or the Division. Results of previous market conduct examinations are available on the Division's website at www.dora.state.co.us/insurance or by contacting the Division.

AMERICAN STANDARD INSURANCE COMPANY
OF WISCONSIN

PERTINENT FACTUAL FINDINGS

UNDERWRITING AND RATING

Issue A: Failure of the Company's surcharge rating rules to comply with Colorado insurance law.

Section 10-3-1104, C.R.S., Unfair methods of competition and unfair or deceptive acts or practices states, in part:

- (1)(f)(II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

In addition, Colorado Insurance Regulation 5-2-12, Concerning Automobile Insurance Consumer Protections, promulgated by the Commissioner of Insurance under the authority of §§ 10-4-601.5, 10-4-625, 10-4-628(4), and 10-1-109, C.R.S., states in part:

Section 4. Definitions

- B. "Incident" means an event or occurrence that results in an accident or motor vehicle conviction. An accident resulting in a motor vehicle conviction shall be treated as a single incident or event.

During the examiners' review of the Company's rating rules it was noted that these rules indicate the Company may charge additional points for one incident if multiple violations were involved. On page 8 of the rating rules under B. Multiple Demerit Point Assignments, the Company rules state:

"If one occurrence involves an accident and one or more traffic violations, the total demerit points for the occurrence will be the greater of the points assigned for the accident or the violation. *We will only grant a waiver to one violation if there are multiple violations associated with the accident.*" [Emphasis added.]

Based on the definition of "Incident" in Colorado Insurance Regulation 5-2-12(4)(B), when accidents and convictions occur together, they are considered one occurrence. Therefore, only one surcharge can be applied, even when multiple violations are involved in a single incident. Therefore, it appears the Company's rating rules are not in compliance with Colorado insurance law.

Recommendation #1:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of § 10-3-1104, C.R.S., and Colorado Insurance Regulation 5-2-12. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division that it has revised its surcharge rating rules to ensure compliance with Colorado insurance laws.

Issue B: Failure, in some cases, to provide insureds with a notice of premium increase.

Section 10-4-629, C.R.S., Cancellation-renewal-reclassification, states in part:

- (1) Except in accordance with the provisions of this part 6, an insurer shall not cancel or fail to renew a policy of insurance that complies with this part 6, issued in this state, as to any resident of the household of the named insured, for any reason other than nonpayment of premium, or increase a premium for any coverage on any such policy unless the increase is part of a general increase in premiums filed with the commissioner and does not result from a reclassification of the insured, or reduce the coverage under any such policy unless the reduction is part of a general reduction in coverage filed with the commissioner or to satisfy the requirements of other sections of this part 6.
- (2) An insurer intending to take an action subject to the provisions of this section shall, on or before the thirtieth day before the proposed effective date of the action, send written notice by first-class mail of its intended action to the insured at the insured's last-known address. The notice shall be in triplicate and shall state in clear and specific terms, on a form that has been certified by the insurer and the insurer has filed a certification with the commissioner that such notice form conforms to Colorado law and any rules promulgated by the commissioner:
 - (a) The proposed action to be taken, including, if the action is an increase in premium or reduction in coverage, the amount of increase and the type of coverage to which it is applicable or the type of coverage reduced and the extent of the reduction;
 - (b) The proposed effective date of the action;
 - (c) The insurer's actual reasons for proposing to take such action. The statement of reasons shall be sufficiently clear and specific so that a person of average intelligence can identify the basis for the insurer's decision without making further inquiry. Generalized terms such as "personal habits", "living conditions", "poor morale", or "violation or accident record" shall not suffice to meet the requirements of this subsection (2).
 - (d) If there is coupled with the notice an offer to continue or renew the policy in accordance with this section, the name of the person or persons to be excluded from coverage and what the premium would be if the policy is continued or renewed with such person or persons excluded from coverage;
 - (e) The right of the insured to replace the insurance through an assigned risk plan;
 - (f) The right of the insured to protest the proposed action and request a hearing thereon before the commissioner by signing two copies of the notice and sending them to the commissioner within ten days after receipt of the notice;

- (g) That, if a protest is filed by the insured, the current insurance will remain in effect until a determination is made by the commissioner upon payment of any lawful premium due or becoming due prior to the determination;

In addition, Colorado Insurance Regulation 5-2-12, Concerning Automobile Insurance Consumer Protections, promulgated by the Commissioner of Insurance under the authority of §§ 10-4-601.5, 10-4-625, 10-4-628(4), and 10-1-109, C.R.S., states in part:

Section 5 Rules

B. Rules Limiting Insurers' Action To Refuse To Write, Cancel, Nonrenew, Increase Premium, Surcharge Or Reduce Coverages

2. Notice of proposed actions.

- a. A proposal to cancel, nonrenew, increase the premium or reduce coverage under a private passenger motor vehicle insurance policy shall state the actual reason for proposing such action in the notice required by §10-4-629(2)(c), C.R.S. Only one notice is required to be sent to the insured whose incident resulted in the proposed action. The statement of reasons shall be clear and specific so that a reasonable person can understand it. The insurer shall clearly describe its underwriting rule, policy or guideline which is the basis for the proposed action. A simple recitation of dates and incidents, without further detail, is not acceptable and may cause the insurer's proposed action to be disallowed.
- b. Insurers proposing to cancel, nonrenew, increase premium or reduce coverage shall prominently display on the notice form, within or adjoining the paragraph entitled "Your Right to Protest", the following premium payment instructions:

In order to continue your coverage during the period the proposed action is protested, you must continue to make payments according to your current premium payment plan until a decision is made by the hearing officer. You may contact your producer (agent) or the company at (phone number) for further information. Please note that the company may bill you later for any premium difference occurring if the company's action is upheld. This is the only notification you will receive to pay the premium due to continue coverage. If the premium is not paid prior to the effective date of the action listed on the notice, the coverage will lapse.

Private Passenger Automobile Nonrenewals

Population	Sample Size	Number of Exceptions	Percentage to Sample
380	50	3	6%

An examination of fifty (50) policies with an increase in premium representing thirteen percent (13%) of policies surcharged by the Company during the period under examination, showed three (3) exceptions (or 6% of the sample) wherein the Company failed to provide the proper notification of the increase in premium, thereby not informing the insureds of their rights under Colorado insurance law.

Recommendation #2:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of § 10-4-629, C.R.S., and Colorado Insurance Regulation 5-2-12. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division that it has implemented necessary procedural changes to provide the appropriate notification to all insureds whose policies are surcharged, to ensure compliance with Colorado insurance laws.

Issue C: Failure, in some cases, to offer a named driver exclusion when non-renewing a private passenger automobile policy.

Section 10-4-630, C.R.S., Exclusion of named driver, states in part:

- (1) In any case where an insurer is authorized under this part 6 to cancel or refuse to renew or increase the premiums on an automobile liability insurance policy under which more than one person is insured because of the claim experience or driving record of one or more but less than all of the persons insured under the policy, the insurer shall in lieu of cancellation, nonrenewal, or premium increase offer to continue or renew the insurance but to exclude from coverage, by name, the person whose claim experience or driving record would have justified the cancellation or nonrenewal. The premiums charged on any such policy excluding a named driver shall not reflect the claims, experience, or driving record of the excluded driver.

The following chart illustrates the significance of error versus the population and sample examined:

Private Passenger Automobile Nonrenewals

Population	Sample Size	Number of Exceptions	Percentage to Sample
380	50	5	10%

An examination of fifty (50) policies for nonrenewal, representing thirteen percent (13%) of policies nonrenewed by the Company during the period under examination, showed five (5) exceptions (or 10% of the sample) wherein the Company failed to offer a named driver exclusion as required by Colorado insurance law.

Recommendation #3:

Within thirty (30) days the Company should demonstrate why it should not be considered to be in violation of § 10-4-630, C.R.S. If the Company is unable to provide such documentation, the Company should be required to provide evidence to the Division that it has revised its procedures to ensure named driver exclusions are offered on all applicable policies that are being considered for non-renewal, to ensure compliance with Colorado insurance law.

CLAIMS PRACTICES

Issue D: Failure, in some cases, to comply with Colorado insurance law regarding the subrogation of PIP claims.

Section 10-4-713, C.R.S., - No tort recovery for direct benefits, states:

- (1) Neither any person eligible for direct benefits described in section 10-4-706 (1) (b) to (1) (e) or alternatively, as applicable, section 10-4-706 (2) or (3) nor any insurer providing benefits described in section 10-4-706 (1) (b) to (1) (e) or alternatively, as applicable, section 10-4-706 (2) or (3) shall have any right to recover against an owner, user, or operator of a motor vehicle or against any person or organization legally responsible for the acts or omissions of such person in any action for damages for benefits required to be paid under section 10-4-706 (1) (b) to (1) (e) or alternatively, as applicable, section 10-4-706 (2) or (3), regardless of any deductible option, waiting period, or percentage limitation; except that an insurer paying benefits under section 10-4-706 (1) (b) to (1) (e) or alternatively, as applicable, section 10-4-706 (2) or (3) to or for any one person for whose injuries legal liability exists or may exist on the part of a third person who is not an insured under a policy of automobile liability insurance issued by an insurer licensed to write automobile liability insurance in this state shall have a direct cause of action against an alleged tort-feasor to only the extent of the alleged tort-feasor's insurance coverage in excess of reasonable compensation paid to the injured person for such person's injury or damage by the alleged tort-feasor's insurer when the injured person could recover in tort pursuant to section 10-4-714. Nothing in this section shall be construed to afford such provider of benefits under section 10-4-706 (1) (b) to (1) (e) or alternatively, as applicable, section 10-4-706 (2) or (3) a cause of action or claim against a person to whom or for whom such benefits were paid except in those cases in which such benefits were paid by reason of fraud or material misrepresentation of fact.

In the course of the review of PIP claim files it was noted that the Company attempted, and in some cases recovered, actual PIP benefits through subrogation. The Company pursued subrogation on claims occurring after July 1, 2003, on policies written prior to July 1, 2003. Although Colorado converted from a no-fault auto system to a tort system effective for automobile insurance policies written on or after July 1, 2003, there was no automatic conversion of PIP policies issued prior to July 1, 2003, to voluntary medical coverage. Accordingly, for automobile insurance policies written prior to July 1, 2003, Colorado's auto no-fault laws, including § 10-4-713, C.R.S., apply until such policies lapse or are renewed.

Therefore, it appears the Company was not in compliance with Colorado insurance laws regarding the subrogation of PIP claims.

Recommendation #4:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of § 10-4-713, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division that it has reviewed its subrogation procedures and implemented necessary changes in order to ensure compliance with Colorado insurance law.

Issue E: Failure, in some cases, to pay PIP claims within the required time period.
--

Section 10-4-708, C.R.S., Prompt payment of direct benefits, states in part:

- (1) Payment of benefits under the coverages enumerated in section 10-4-706 (1) (b) to (1) (e) or alternatively, as applicable, section 10-4-706 (2) or (3) shall be made on a monthly basis. Benefits for any period are overdue if not paid within thirty days after the insurer receives reasonable proof of the fact and amount of expenses incurred during that period; except that an insurer may accumulate claims for periods not exceeding one month, and benefits are not overdue if paid within fifteen days after the period of accumulation. If reasonable proof is not supplied as to the entire claim, the amount supported by reasonable proof is overdue if not paid within thirty days after such proof is received by the insurer. Any part or all of the remainder of the claim that is later supported by reasonable proof is overdue if not paid within thirty days after such proof is received by the insurer. In the event that the insurer fails to pay such benefits when due, the person entitled to such benefits may bring an action in contract to recover the same.

Section 10-3-1104, C.R.S., Unfair methods of competition and unfair or deceptive acts or practices, states in part:

- (1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:
 - (h) Unfair claim settlement practices: Committing or performing either in willful violation of this part 11 or with such frequency as to indicate a tendency to engage in a general business practice, any of the following:
 - (VI) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;

Colorado Insurance Regulation 5-2-8, Timely Payment of Personal Injury Protection Benefits, jointly promulgated by the Commissioner of Insurance and the Executive Director of the Department of Revenue pursuant to §§10-1-109, 10-4-704, 10-4-708(1.3) (effective until July 1, 2003 except for claims incurred under policies lawfully in effect as described in this regulation), and 10-3-1110(1), C.R.S., states in part:

Section 3. Applicability and Scope

The Colorado Reparations (No-Fault) Act was repealed effective July 1, 2003. Automobile insurance policies with personal injury protection (PIP) benefits issued or renewed prior to July 1, 2003 will continue to incur PIP claims until such benefits do not apply any longer. This regulation applies to claims occurring under No-Fault Policies issued prior to July 1, 2003.

Section 4. Rule

A. Prompt Investigation of PIP Claims

Section 10-3-1104(1)(h)(III), C.R.S., requires insurers to adopt and implement reasonable standards for the prompt investigation of claims. An insurer is also required to promptly investigate a claim while it is accumulating claim's expense.

Whenever an insurer requires that an application for benefits form be submitted by an injured party, the insurer shall forward the form to the injured party upon notification of the injury.

When an investigation is incomplete or is otherwise continued, the insurer shall, within 30 days after the documents are received as described in C. below and every 30 days thereafter, send to the claimant or the claimant's representative, and the health care provider, if applicable, a letter setting forth the reasons additional time is needed for investigation.

Where additional information is required to complete an investigation, the insurer shall request such information, specifically listing the items needed to complete the investigation. A copy of such request shall be delivered to the claimant, the claimant's representative, the health care provider or other person or entity most likely in possession of the required information.

B. Prompt Payment of Pip Benefits

Section 10-4-708(1), C.R.S. provides that benefits under the coverages enumerated in §10-4-706, C.R.S. are overdue if not paid within 30 days after the insurer receives reasonable proof of the fact and amount of the expenses incurred.

Section 10-4-708(1), C.R.S., allows for the accumulation of claims expense for periods not exceeding one month and provides that benefits are not overdue if paid within 15 after the end of a defined period of accumulation. An insurer is permitted by this statute to pay a bill within 15 days after the end of a defined accumulation period only when there is a reasonable likelihood that multiple providers are involved and more than one bill is received during the accumulation period.

The following chart illustrates the significance of error versus the population and sample examined:

Private Passenger Automobile PIP Claims Paid

Population	Sample Size	Number of Exceptions	Percentage to Sample
254	50	4	8%

An examination of fifty (50) PIP claim files, representing approximately twenty percent (20%) of all paid PIP claim files handled by the Company during the examination period, showed four (4) exceptions (8% of the sample) wherein the Company failed to pay at least one medical bill in each file within the thirty (30) day statutory standard as required by Colorado insurance law.

Recommendation #5:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of §§ 10-4-708 and 10-3-1104, C.R.S., and Colorado Insurance Regulation 5-2-8. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division that it has reviewed its claims handling procedures and implemented necessary changes in order to ensure compliance with Colorado insurance laws.

Summary of Issues and Recommendations

**AMERICAN STANDARD INSURANCE COMPANY
OF WISCONSIN**

ISSUE		RECOMMENDATION	PAGE
Underwriting and Rating			
Issue A: Failure of the Company’s surcharge rating rules to comply with Colorado insurance laws.	1	14	
Issue B: Failure, in some cases, to provide insureds with a notice of premium increase.	2	17	
Issue C: Failure, in some cases, to offer a named driver exclusion when nonrenewing a private passenger automobile policy.	3	18	
Claim Practices			
Issue D: Failure, in some cases, to comply with Colorado insurance law regarding the subrogation of PIP claims.	4	20	
Issue E: Failure, in some cases, to pay PIP claims within the required time period.	5	23	

Independent Market Conduct Examiners

Kathleen M. Bergan, CIE

Kenneth C. Lang, AIE

For

The Colorado Division of Insurance

1560 Broadway, Suite 850

Denver, Colorado 80202

Participated in this examination and in the preparation of this report